

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

**GREGORY RHOADES,** **CASE NO. 1:02-CV-5476-AWI DLB-P**  
**Plaintiff,** **ORDER GRANTING IN PART AND**  
**v.** **DENYING IN PART DEFENDANTS'**  
**ALAMEIDA, et.al.,** **MOTION FOR SUMMARY JUDGMENT**  
**Defendant.** **(Doc. 76)**

Plaintiff Gregory Rhoades, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On December 12, 2008, the Magistrate Judge filed Further Findings and Recommendations herein which was served on the parties and which contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty days. On January 12, 2009, Defendants filed an objection. Plaintiff did not file an objection.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the Court finds the Findings and Recommendations to be supported by the record and by proper analysis except as to one Defendant.

At issue in this action is the destruction of Plaintiff's religious property pursuant to prison policy. Prison policy limited the amount of property Plaintiff could keep in his cell while serving a SHU term. Prison policy called for the destruction of Plaintiff's property beyond the

1 limit, including religious property, because Plaintiff neither provided an address to mail  
2 Plaintiff's property to nor provided funds to pay for mailing. Plaintiff contends that the policy  
3 requiring the destruction of an indigent person's property, who has no one to send the property  
4 to, instead of storing the property during the SHU term violated Plaintiff's First Amendment  
5 rights and due process rights. Defendants object to the Magistrate Judge's recommendation that  
6 this action proceed as to Defendant Alameida and Defendant Adkinson.

7 **A. Defendant Alameida**

8 The documents on file in this action and the undisputed facts reveal that Plaintiff's theory  
9 of liability as to Defendant Alameida is that he permitted a policy to exist that allowed the  
10 destruction of Plaintiff's property. This policy required the destruction of an indigent person's  
11 property who has no one to send the property to. Plaintiff claims his property should have been  
12 stored during the SHU term. Defendant Alameida's involvement in this policy is unclear.  
13 Defendants have come forward with evidence that Defendant Alameida was not the CDC  
14 Director at the time Plaintiff's property was destroyed. Plaintiff offers no evidence that  
15 Defendant Alameida had anything to do with the policy at issue in this action.

16 The civil rights statute requires that there be an actual connection or link between the  
17 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
18 Monell v. Department of Social Services, 43 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
19 (1976). Plaintiff has failed to create a disputed issue of fact linking Defendant Alameida to  
20 Plaintiff's alleged constitutional deprivation. Thus, Defendant Alameida is entitled to summary  
21 judgment.

22 It is possible Plaintiff believes Defendant Alameida violated his constitutional rights  
23 because Defendant Alameida was the CDC Director when Plaintiff's final administrative appeal  
24 was denied. Defendant Alameida's actions or inactions in reviewing Plaintiff's administrative  
25 appeal are not sufficient to state a cause of action against Defendant Alameida. The existence of  
26 an administrative grievance process does not create any substantive rights and cannot support a  
27 claim for relief for violation of a constitutional right. See Ramirez v. Galaza, 334 F.3d 850, 860  
28 (9<sup>th</sup> Cir. 2003) (no liberty interest in processing of appeals because no entitlement to a specific

1 grievance procedure); Massey v. Helman, 259 F.3d 641, 647 (7<sup>th</sup> Cir. 2001) (existence of  
2 grievance procedure confers no liberty interest on prisoner); Buckley v. Barlow, 997 F.2d 494,  
3 495 (8<sup>th</sup> Cir. 1993) (grievance procedure is a procedural right only, it does not confer any  
4 substantive right upon the inmates). Actions in reviewing a prisoner's administrative appeal  
5 cannot serve as the basis for liability under Section 1983. Buckley, 997 F.2d at 495. The  
6 position that anyone who knows about a violation of the Constitution, and fails to cure it, has  
7 violated the Constitution himself is not correct. "Only persons who cause or participate in the  
8 violations are responsible. Ruling against a prisoner on an administrative complaint does not  
9 cause or contribute to the violation. A guard who stands and watches while another guard beats a  
10 prisoner violates the Constitution; a guard who rejects an administrative complaint about a  
11 completed act of misconduct does not." George v. Smith, 507 F.3d 605, 609-10 (7<sup>th</sup> Cir. 2007)  
12 (citing Greeno v. Daley, 414 F.3d 645, 656-57 (7<sup>th</sup> Cir. 2005)). Because Plaintiff has neither a  
13 liberty interest nor a substantive right in inmate appeals, Defendant Alameida is entitled to  
14 summary judgment concerning any claims based on his processing and/or reviewing the inmate  
15 appeal.

16 **B. Defendant Adkinson**

17 Defendants also contend that Defendant Adkinson is entitled to summary judgment.  
18 Plaintiff's theory of liability as to Defendant Adkinson is that he was the one who actually  
19 destroyed Plaintiff's property pursuant to prison regulations. "Prison walls do not form a barrier  
20 separating prison inmates from the protections of the Constitution." Turner v. Safley, 482 U.S.  
21 78, 84 (1987). "A prisoner retains those First Amendment rights that are not inconsistent with  
22 his status as a prisoner or with the legitimate penological objectives of the corrections system."  
23 Ashker v. California Dep't Of Corr., 350 F.3d 917, 922 (9<sup>th</sup> Cir. 2003) (internal citations and  
24 quotations omitted). "A prison regulation that impinges on inmates' constitutional rights  
25 therefore is valid only if it is 'reasonably related to legitimate penological interests.'" Ashker,  
26 350 F.3d at 922 (quoting Turner, 482 U.S. at 88). "However, "courts are ill equipped to deal  
27 with the increasingly urgent problems of prison administration and reform." Turner, 482 U.S. at  
28 84 (internal quotations and citations omitted). Thus, "deference is accorded to prison authorities

1 in order to avoid hampering their ability to anticipate security problems and to adopt innovative  
2 solutions to the intractable problems of prison administration,”” Ashker, 350 F.3d at 922  
3 (quoting Turner, 482 U.S. at 85, 88), and the regulation must be upheld if it is reasonably related  
4 to legitimate penological interests. Mauro v. Arpaio, 188 F.3d 1054, 1058 (9<sup>th</sup> Cir. 1999) (citing  
5 to Turner, 482 U.S. at 84-85 (internal quotations omitted)). In determining the reasonableness of  
6 the regulation, the court must consider the following factors: (1) whether there is a “valid,  
7 rational connection between the regulation and the legitimate government interest put forward to  
8 justify it,” (2) “whether there are alternative means of exercising the right,” (3) the impact that  
9 the “accommodation of the asserted constitutional right will have on guards and other inmates,”  
10 and (4) “the absence of ready alternatives.” Turner, 482 U.S. at 89-90.

11 Defendants contend that the undisputed facts show that the first Turner prong has not  
12 been met. In the Further Findings and Recommendations, the Magistrate Judge found that  
13 Defendants had failed to meet their burden as the moving party to submit evidence demonstrating  
14 a legitimate governmental interest that justifies the policy requiring inmates to pay to have their  
15 disallowed property mailed to a family member or friend or have the property destroyed. In the  
16 objections, Defendants contend that if a regulation is common sense, the state is not required to  
17 make an evidentiary showing to satisfy the first prong in Turner. With respect to the first Turner  
18 prong, the initial burden is on defendants to put forth a “common sense” connection between  
19 their policy and a legitimate penological interest. See Frost v. Symington, 197 F.3d 348, 357 (9<sup>th</sup>  
20 Cir. 1999). When an inmate does not present enough evidence to refute this common sense  
21 connection between the prison regulation and the objective, the court is to presume the  
22 governmental objective is legitimate and neutral and Turner’s first prong is satisfied. Ashker v.  
23 California Dept. of Corrections, 350 F.3d 917, 923-24 (9<sup>th</sup> Cir. 2003); Frost, 197 F.3d at 357.  
24 When an inmate presents evidence that refutes a common sense connection between a legitimate  
25 objective and the prison regulation, the state must present enough counter-evidence to show that  
26 the connection is not so “remote as to render the policy arbitrary or irrational.” Ashker, 350 F.3d  
27 at 923; Frost, 197 F.3d at 357.

28 In their objections, Defendants contend that Plaintiff has not offered admissible evidence

1 to refute the common sense rationale Defendants have offered. Defendants argue that because  
2 their proffered rational is common sense and intuitive, Defendants were not required to provide  
3 evidence. Defendants maintain that their common sense reason to limit the type and amount of  
4 the property a prisoner can possess in the SHU is based on the prison's need to reduce fire  
5 hazards, promote quick searches, reduce the risk of vermin associated with overcrowded cells,  
6 prevent theft, limit CDCR liability for loss to property, and free valuable storage space. The  
7 court does not find that Defendants have set forth a common sense reason for the regulation;  
8 partly this is because Defendants are not focusing on the correct regulation and facts. The issue  
9 currently before the court is ***not*** the general regulation limiting property in the SHU. The court  
10 already found that Defendants' destruction of Plaintiff's other property did not violate Plaintiffs'  
11 rights and the court granted Defendants summary judgment. In addition, the regulation at issue  
12 in Plaintiff's claim is also not the one refusing to store ***all*** property not allowed in the SHU.  
13 Rather, the regulation at issue is the one that causes the prison to destroy ***religious property and***  
14 ***artifacts*** if an inmate is unable to mail them to a friend or relative. Given the small number of  
15 religious items an inmate would be unable to have in a SHU cell and the number of inmates who  
16 would be unable to mail their religious items to an outside person, the court finds that  
17 Defendants have not come forward with a common sense reason for their regulation. As such,  
18 Defendants have failed to meet their burden on the first Turner prong on this motion for  
19 summary judgment, and Defendant Adkinson is not entitled summary to judgment.

20 Defendants also contend that Defendant Adkinson is entitled to summary judgment  
21 because he did not know that any of the items he destroyed had any religious significance.  
22 There is a disputed issue of fact on what Defendant Adkinson knew about Plaintiff's property.  
23 Plaintiff conceded at his deposition that he never told Defendant Adkinson about the religious  
24 nature of some of his items when he requested an interview with Defendant Adkinson or in his  
25 CDC Form 602. See Plaintiff's Depo. at 25-26. The portion of the CDC Form that mentions  
26 religious items was not written until Plaintiff asked for a Director's Level review in November,  
27 2000, after the property had already been destroyed. However, the Inventory For SHU Housing  
28 Form, which is Attachment Two to Defendant Adkinson's Declaration, indicates that some of the

1 seized property was American Indian religious property. See Adkinson Dec. Attach. 2.  
2 Defendant Adkinson signed and dated this form when he disposed of Plaintiff's property. As  
3 such, an inference can be made that Defendant Adkinson reviewed the form he signed; A form  
4 that noted the presence of religious property. Thus, the court cannot find on summary judgment  
5 that Defendant Adkinson never knew about the significance of the religious property.<sup>1</sup>

6 **ORDER**

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The [Further Findings and Recommendations](#), filed December 12, 2008, along  
9 with the additional analysis set forth above, is adopted in part;
- 10 2. Defendants' motion for summary judgment, filed September 12, 2007 is  
11 GRANTED IN PART AND DENIED IN PART as follows:
- 12 3. Defendants' motion for summary judgment on Plaintiff's First Amendment claim  
13 based on the destruction of Religious Property is DENIED;
- 14 4. Defendants' motion for summary judgment on Plaintiff's Due Process Clause  
15 claim is DENIED;
- 16 5. Defendants Vogel, Brown, and Alameida's motion for summary judgment as to  
17 them is GRANTED; and
- 18 6. This case shall proceed to trial on Plaintiff's First Amendment and Due Process  
19 Claims based on the destruction of Religious Property against Defendant Adkison.

20  
21 IT IS SO ORDERED.

22 **Dated: March 24, 2009**

23 /s/ Anthony W. Ishii  
24 CHIEF UNITED STATES DISTRICT JUDGE

25  
26  
27 <sup>1</sup> It is not entirely clear whether Defendant Adkinson's knowledge that he was destroying religious property  
28 is necessary to show a First Amendment violation. However, Defendant Adkinson's lack of knowledge would most  
likely entitle him to qualified immunity.